

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 04-0111 AGI
ADJUSTED GROSS INCOME TAX
FOR TAX PERIOD: 2002**

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Issues

Adjusted Gross Income Tax: Imposition

Authority: IC 6-3-2-1 (a), IC 6-3-2-2 (a), *State Election Board v. Evan Bayh*, 521 N.E.2d 1212, (Ind. 1988).

The taxpayers protest the imposition of the adjusted gross income tax.

Statement of Facts

The taxpayers are a married couple who were assessed Indiana adjusted gross income tax, penalty and interest for the year 2002. They protested the assessment and a hearing was held by telephone. This Letter of Findings results.

Adjusted Gross Income Tax: Imposition

Discussion

Indiana imposes an adjusted gross income tax pursuant to the following provisions of IC 6-3-2-1 (a):

Each taxable year, a tax at the rate of three and four-tenths percent (3.4%) of adjusted gross income is imposed upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person.

The department assessed adjusted gross income tax on the taxpayers' income as an Indiana resident. The taxpayers contends that they earned the income as a nonresident of Indiana and is not subject to the imposition of the tax. The issue to be determined is whether or not the taxpayers were Indiana residents for purposes of Indiana adjusted gross income taxation during the 2002 tax year.

For purposes of adjusted gross income tax, IC 6-3-1-12 defines the term “resident” as “any individual who was domiciled in this state during the taxable year.” In accordance with this definition, the taxpayer would be considered an Indiana resident and subject to tax on income earned during the period when he was domiciled in Indiana.

Indiana tax assessments are presumed to be correct and taxpayers bear the burden of proving that any particular assessment is incorrect. IC 6-8.1-5-1 (b).

The Indiana Supreme Court considered the issue of the meaning of domicile in *State Election Board v. Evan Bayh*, 521 N.E.2d 1212, (Ind. 1988). In that case, Mr. Bayh desired to run for governor of the state. Pursuant to public discussion concerning whether Mr. Bayh met the residency requirements for governor, Mr. Bayh sought a declaratory judgment determining that he met the residency requirement. The Indiana Supreme Court affirmed the trial court’s decision that the standard for residency was whether or not Mr. Bayh had an Indiana domicile. It also held that Mr. Bayh was domiciled in Indiana.

Domicile in Indiana is defined as “the place where a person has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning.” *State Election Board* at page 1317. Once established, a person’s domicile is presumed to continue until the person’s actions provide adequate evidence that along with moving to another jurisdiction, the person intends to establish a domicile in the new residence. Whether or not the person has successfully established a new domicile is a question of fact to be determined by the trier of fact. *Id.* at 1317. Some of the facts considered were that Mr. Bayh paid in-state tuition at Indiana University, out-of -state tuition at the University of Virginia law school and voted in the elections in Vigo County, Indiana. He also registered for the draft from Indiana. The Supreme Court considered these acts adequate evidence to prove that Mr. Bayh intended to return to Indiana and retain his Indiana domicile even though he had lived outside the state for several years.

The taxpayers contend that they moved from Indiana in 1999 and purchased property in Florida in 1999. The taxpayers kept their Indiana drivers’ licenses until they replaced them with Florida licenses in late 2002. They also obtained Florida voters’ registration cards in late 2002. The totality of these actions and failures to act do not clearly evidence that the taxpayers intended to change their domicile to Florida until late 2002.

The taxpayers did not meet his burden of proving that their changed his domicile from Indiana to Florida.

Finding

The taxpayers’ protest is denied.